

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

MELISSA BARNETT,	)	
	)	
Petitioner,	)	
v.	)	No. 1:07-cv-32
	)	<i>Edgar/Carter</i>
REUBEN HODGE, Warden	)	
	)	
Respondent.	)	

**MEMORANDUM**

This is a petition for the writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 [Court File No. 1]. Barnett challenges her 1991 convictions and sentences for one count of first degree murder and one count of conspiracy to commit first degree murder. Respondent filed a motion to dismiss Barnett's second habeas petition because it is barred by the applicable one year statute of limitation [Court File No. 5].

This is Barnett's second petition for federal habeas corpus relief challenging her 1991 convictions and sentences. Her first habeas corpus petition was dismissed as time-barred. *Barnett v. State*, Civil Action No. 3:99-cv-176 (M.D. Tenn. 1999) [Addenda 10 & 11]. The Sixth Circuit denied petitioner's request for a certificate of appealability and *in forma pauperis* status on appeal. *Barnett v. State*, No. 99-5672 (6th Cir. Nov. 30, 1999) [Addendum 12].

The Antiterrorism and Effective Death Penalty Act, effective April 24, 1996, requires Barnett to file a motion in the United States Court of Appeals for the Sixth Circuit for an order authorizing this Court to consider this petition. 28 U.S.C. § 2244(b)(3); *also see Lyons v. Ohio Adult Parole Authority*, 105 F.3d 1063, 1066 (6th Cir.), *cert. denied*, 520 U.S. 1224 (1997). When a petitioner

files a second or successive petition for habeas corpus relief in the district court without § 2244(b)(3) authorization from the Sixth Circuit Court of Appeals, this Court must transfer the documents(s) pursuant to 28 U.S.C. § 1631. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

This Court has not received an order from the Sixth Circuit authorizing the Court to consider the pending petition. Accordingly, Respondent's motion to dismiss [Court File No. 5] will be **DENIED WITHOUT PREJUDICE AS PREMATURE** and the Clerk will be **DIRECTED** to **TRANSFER** this action to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d at 47.

An order will enter.

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE